

Compensation—Retroactive Salary Increases—Unclassified Positions—Central Intelligence Agency

The extraordinary powers conferred upon the Central Intelligence Agency by section 10 of the Central Intelligence Agency Act of 1949, to carry out its functions do not include authority for payment to the Agency's employees—not subject to the Classification Act of 1949, as amended—of retroactive increases in compensation equivalent to those authorized by the Classification Act to be paid to employees occupying positions subject to the act.

Comptroller General Warren to the Director, Central Intelligence Agency, November 21, 1951:

Reference is made to your letter of November 13, 1951, requesting an opinion as to whether there is any legal objection to the payment, pursuant to authority conferred by section 10, Central Intelligence Agency Act of 1949, 63 Stat. 201, to employees of the Central Intelligence Agency of retroactive increases in compensation equivalent to those authorized by Public Law 201, approved October 28, 1951, 65 Stat. 612, to be paid to employees under the Classification Act of 1949, 63 Stat. 954.

Your letter outlines the history of that part of the Central Intelligence Agency Act of 1949 which resulted in the conclusion by the Congress that employees of the said Agency should not be subject to the classification act. Also, it points out that, notwithstanding the freedom of action granted the Agency in that regard, an administrative policy of adherence to the provisions of the classification act was adopted shortly after the above-cited legislation became law.

Careful consideration has been given those matters, and the discussion thereof, but they seem to be no different basically than the matters discussed in decisions B-106332, B-106449, and B-106525, dated November 6, 15 and 20, 1951, respectively, wherein it was concluded, for reasons stated therein, that retroactive increases to the personnel involved were not authorized. Here, as there, the undisputed and controlling facts are that the employees are not subject to the classification act, as amended, are not included in Public Law 201, expressly or by necessary implication, and there is no specific statutory authority for granting them retroactive salary increases. To those facts there must be applied the long established and recognized rule that retroactive salary increases may be granted only by express authority of the Congress and may not otherwise be granted administratively.

However, notwithstanding established law with reference to retroactive increases, you urge that you are authorized to pay such increases to the Agency's employees by resort to the power conferred by section 10 of the Central Intelligence Agency Act of 1949, 63 Stat. 212, which reads in part, as follows:

SEC. 10. (a) Notwithstanding any other provisions of law, sums made available to the Agency by appropriation or otherwise may be expended for purposes necessary to carry out its functions, including—

(1) personal services, including personal services without regard to limitations on types of persons to be employed * * *

(2) supplies, equipment, and personnel and contractual services otherwise authorized by law and regulations, when approved by the Director.

(b) The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds * * *

The extraordinary powers granted to the Central Intelligence Agency by section 10 and other sections of the 1949 act—and this I am sure you will agree—result solely from the congressional recognition of the extraordinary functions assigned that Agency by the act.

This Office recognized that fact when the bill which became the Central Intelligence Agency Act of 1949 was pending before the Congress and for that reason did not object to the grant of what must

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be conceded as unusual authority. [But I feel certain it was not contemplated by the sponsors of the bill or by the Congress that this broad authority would be resorted to, or that it even contemplated a disregard of any control with respect to the normal administrative or operating problems which confront the ordinary Government agency.] On the contrary the act itself specifically and in considerable detail delineates the increased authority of your Agency in those matters. To adopt the view suggested in your letter would be equivalent to concluding that your Agency is authorized to grant retroactive increases, bonuses, or other perquisites to any or all of its employees with such frequency, or at such times, as desired, contingent only on the availability of funds. [I cannot attribute any such intention to the Congress.]

Under the circumstances, it must be held that the proposed retroactive increases by the Central Intelligence Agency are not "necessary